

**Application made by the Solicitors Regulation Authority to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007 for the approval of the SRA Amendments to Regulatory Arrangements (Red Tape Initiative – Second Phase) Rules [2013]**

**A Summary**

1. This application is made to the Legal Services Board (LSB) for the approval of changes to the SRA Handbook to effect the second phase of the SRA's Red Tape Initiative. The specific changes are described in section C below and are designed to remove outdated and unnecessary regulatory processes and requirements, thus reducing the burden of regulation and enabling the SRA to operate as a risk-based regulator.
2. In outline, the changes:
  - reduce the reporting obligations of the compliance officers of recognised bodies/recognised sole practitioners; and
  - simplify the renewal process for practising certificates/registration as an European lawyer in relation to declarable events.

**B Details of the SRA's current regulatory arrangements**

3. Since October 2011, the SRA has adopted a risk-based, outcomes-focused approach to regulation. This approach allows the SRA to focus on issues that really matter, whilst giving practitioners the freedom and flexibility to decide how best to deliver services in the context of managing their own risks.
4. The regulatory provisions relevant to the current application:
  - require the compliance officers in a firm to report any breaches, including non-material breaches, to the SRA;
  - impose additional requirements and processes on applicants for a practising certificate, or registration as an European lawyer, in certain circumstances.

**C Nature and effect of the proposed amendments to the SRA's regulatory arrangements**

5. The SRA Amendments to Regulatory Arrangements (Red Tape Initiative – Second Phase) Rules [2013], annexed to this application, were made by the SRA Board on 24 July 2013, subject to approval by the LSB. The proposed amendments have been consulted on and constitute the second phase of the SRA's ongoing Red Tape Initiative.
6. The effect of the amendment rules in relation to each proposal is set out below.

*Reduce the reporting obligations of compliance officers*

7. The SRA Board has decided to remove the obligation of the compliance officers of recognised bodies and recognised sole practitioners to report non-material breaches as part of firms' annual submission of information to the SRA. The rules will continue to require them to record all breaches for

production on request and to report material breaches to the SRA as soon as reasonably practicable.

8. Alternative business structures (ABSs) will have to continue to report non-material breaches because of the full reporting obligations imposed on them by the Legal Services Act 2007. The existing rules will continue to allow these non-material breaches to be included in the annual information report submitted by ABS firms to the SRA.
9. The effect of this change will be to give the majority of SRA-regulated firms greater control over identifying and dealing with patterns of non-material breaches themselves, and allow the SRA to concentrate on material breaches.

*Simplify the practising certificate/European lawyer registration process*

10. The SRA Board has decided to amend the rules relating to the practising certificate/European lawyer registration process following certain events, such as the imposition of disciplinary sanctions, by:
  - removing the obligation of an applicant to declare his or her involvement in a firm which has become insolvent, provided the applicant had ceased to be a manager/director/member at least 36 months prior to the insolvency event;
  - removing the redundant six week notification requirement;
  - clarifying when applicants need not declare an historic event again.
11. The effect of these changes will be to simplify the renewal process when applicants apply for a practising certificate or registration as an European lawyer following these events.

**D Rationale for amendments**

12. The Red Tape Initiative is designed to achieve a regulatory framework consistent with the SRA's risk-based, outcomes-focused approach, allowing it to concentrate on the areas of greatest risk and the issues that really matter.
13. We have obtained feedback from our stakeholders on the changes they would like to see to remove unnecessary regulation and simplify processes. The first set of amendments were set out in the initial Red Tape consultation paper in December 2012 and were incorporated in Version 7 of the SRA Handbook on 1 April 2013, following the approval of the LSB.
14. The rationale for the amendments included in the second phase of the Red Tape Initiative is to reduce the burden and cost of regulation for the SRA and those it regulates in two additional areas, without prejudicing the regulatory objectives.
15. Stakeholders have expressed concern about the requirement imposed on the compliance officers of a firm to report all breaches of whatever nature, arguing that this is inconsistent with an outcomes-focused approach where the onus should be on firms to develop appropriate and effective systems to achieve compliance. The SRA agrees and takes the view that requiring the delivery of information on all breaches from all firms, primarily because the Legal Services

Act 2007 imposes that requirement on ABSs, is unsustainable and cannot be justified in the context of proportionate, risk-based and cost-effective regulation.

16. Stakeholders and the SRA have also identified a need to simplify the additional provisions which apply to certain applicants for a practising certificate or registration as an European lawyer. There is no longer any need for the six week advance notification period now that applications are made online through MySRA. It is also considered proportionate to provide a cut-off time for declarations from former managers/directors/members of a firm which becomes insolvent (in line with the approach taken by the Insolvency Service which limits the information it requires about directors to those who were in office in the last three years of a company's trading).

## **E Statement in respect of the LSA Regulatory Objectives**

17. The SRA must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007, and in a way that it considers to be most appropriate for the purpose of meeting those objectives. The SRA Board is satisfied that the amendments it has made are compatible with the regulatory objectives and represent an appropriate means of meeting them.

### *Protecting and promoting the public interest*

18. Removing the obligation of the compliance officers of recognised bodies/recognised sole practitioners to report non-material breaches is in line with a risk-based and outcomes-focused regulatory approach. The public interest is protected by the continuing obligation to record all breaches for production to the SRA on request and to report material breaches as soon as reasonably practicable. (The position for ABSs is unaffected; as already noted, they will continue to report all breaches.)
19. The amendments to the practising certificate renewal process remove requirements and processes which add to the cost of regulation but are unnecessary to protect the public interest.

### *Supporting the constitutional principle of the rule of law*

20. The amendments are considered to have a neutral effect on this regulatory objective.

### *Improving access to justice*

21. The amendments are considered to have a neutral effect on this regulatory objective.

### *Protecting and promoting the interests of consumers*

22. As in the case of the public interest objective, the interests of consumers are protected by the continuing obligation of compliance officers to record all breaches for production to the SRA on request and to report material breaches as soon as reasonably practicable.
23. The amendments to the practising certificate renewal process remove requirements and processes which add to the cost of regulation and thus to the

cost of legal services, but are unnecessary to protect the interests of consumers.

*Promoting competition in the provision of services*

24. The amendments are considered to have a neutral effect on this regulatory objective.

*Encouraging an independent, strong, diverse and effective legal profession*

25. The amendments should have a positive effect on this regulatory objective through the removal of burdensome and unnecessary regulatory provisions.

*Increasing public understanding of the citizen's legal rights and duties*

26. The amendments are considered to have a neutral effect on this regulatory objective.

*Promoting and maintaining adherence to the professional principles*

27. The amendments are considered to be proportionate and to have no foreseeable negative effects on this regulatory objective.

**F Statement in respect of the Better Regulation Principles**

28. The SRA Board believes that the amendments fulfil the SRA's obligations under section 28 of the Legal Services Act 2007 to have regard to the Better Regulation Principles. The amendments are considered to be proportionate and targeted in a way that achieves the necessary level of protection for consumers and the public interest with an appropriate level of regulation.
29. The SRA has consulted publicly on the proposed changes and taken full account of the views of stakeholders in developing the regulatory amendments. Following the approval of the LSB, we will ensure that the changes are published and implemented transparently.

**G Statement in relation to desired outcomes**

30. The SRA's desired outcome is to have in place a regulatory framework which is aligned with risk-based, outcomes-focused regulation and contains only those regulations and processes that benefit the public interest.
31. We will assess the outcome of the amendments as we continue to develop and operate as a risk-based regulator, focusing on areas of greatest risk and on those issues that matter the most.

**Stakeholder engagement**

32. The SRA published a formal consultation on 29 April 2013 setting out the proposals for the second phase of the Red Tape Initiative. This was designed to give all those whom we regulate, users of SRA-regulated legal services and others with an interest in legal regulation the opportunity to comment.
33. The closing date for responses was 28 June 2013. Nineteen responses were received in total from a variety of stakeholders, including firms of different

sizes, local law societies and the Law Society. There was a high level of support for the proposals which were seen by the majority of respondents as an appropriate way to reduce the regulatory burden without prejudicing the public interest.

**I Statement in relation to impact on other approved regulators**

34. The amendments have no impact on any other approved regulator under the Legal Services Act 2007.

**J Implementation timetable**

35. This application for LSB approval of the SRA Amendments to Regulatory Arrangements (Red Tape Initiative – Second Phase) Rules [2013] is made on 2 August 2013.
36. Subject to LSB approval, the changes will be included in Version 8 of the SRA Handbook due to be published on 1 October 2013.

**K Further explanatory information**

37. The following documents are annexed to this application:

**Annex 1** - SRA Amendments to Regulatory Arrangements (Red Tape Initiative – Second Phase) Rules [2013]

**Annex 2** – SRA Board report on the results of the consultation on the second phase of the Red Tape Initiative

**Annex 3** – consultation on the second phase of the Red Tape Initiative

**L SRA contact for matters relating to this application**

Derek Mitchell  
Solicitors Regulation Authority  
The Cube, 199 Wharfside Street, Birmingham B1 1RN